

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SHERWOOD HARD,

Petitioner,

v.

Case No. 11-C-1081

MICHAEL DITTMAN,

Respondent.

ORDER

Petitioner filed a request for a certificate of appealability following this Court's dismissal of his petition on jurisdictional grounds. He asserts that dismissal on the basis that the petition was a "second or successive" petition was erroneous because his prior federal petition was dismissed for failure to exhaust, *i.e.*, not on the merits. If true, that would change things. However, the prior dismissal by Judge Stadtmueller, which was upheld on appeal, *was* a dismissal on the merits because Judge Stadtmueller ruled that Petitioner had procedurally defaulted his claims in the state courts. In other words, there was nothing left to "exhaust" at the state level.

Accordingly, I conclude that a COA should be **DENIED**, as reasonable jurists would not debate the outcome of my jurisdictional ruling.

SO ORDERED this 27th day of January, 2012.

s/ William C. Griesbach
William C. Griesbach
United States District Judge